IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3470 OF 2005

Ashok K.Chanda. ... Applicant.

Versus.

M/s.BDP (India) Pvt.Ltd. & ors. ... Respondents.

Shri Prakash Naik i/by M/s.Khaitan & Co. for the Applicant.

Mrs.Madhubala Shetty for Respondent No.1.

Ms.Rajashree Gadhvi, A.P.P. for State.

CORAM : ABHAY S. OKA, J.

DATED : 10th June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. Prayer in this application is for cancellation of the non-bailable warrant issued by the learned Metropolitan Magistrate by order dated 10th May 2005.

2. The Applicant is an accused in a complaint under section 138 of the Negotiable Instruments Act. The Applicant made an application dated 10th May 2005 under section 205 of the Code of Criminal Procedure, 1973 praying for dispensing with his personal appearance on that day and on subsequent dates and for allowing the Accused to be represented by an Advocate. On the same day, the learned Magistrate passed an order on the said application rejecting the same on the ground that the Applicant was absent and his Advocate was not ready to

record the plea. Subsequently the learned Magistrate passed an order issuing non-bailable warrant on the basis of the separate application filed by the original Complainant.

3. The learned Counsel appearing for the Applicant submitted that the next date fixed in the Criminal Case is 20th July 2005. He makes a statement that on that day the Applicant and his Advocate will remain present and plea of the Applicant can be recorded on that day.

4. In view of this statement, it is not necessary to keep this application pending. The application for grant of exemption has been rejected by the learned Magistrate on the ground that the Applicant was absent and his Advocate was not ready to record his plea. Now a statement has been made that the Applicant will remain present along with the Advocate on the next date and on that day his plea can be recorded. In view of this the order dated 10th May 2005 passed on the said Application for grant of exemption will have to be set aside with a direction to the learned Magistrate to decide the said application afresh as expeditiously as possible. On the next date, if the Applicant appears before the learned Magistrate, he can always apply for cancellation of non-bailable warrant and if such an application is made on that day, the learned Magistrate will decide the same as expeditiously as possible and preferably on or before

19th August 2005.

5. The ad-interim protection granted by this Court by order dated 1st July 2005 can be extended till 22nd August 2005.

6. The learned Counsel appearing for the Respondent/Org.Complainant has no objection for adopting this course.

7. Hence the Application is disposed of by the following order:

(i) The Applicant will remain present before the learned Magistrate on 20th July 2005 along with his Advocate. The statement made to that effect by the learned Counsel for the Applicant is accepted.

(ii) The order dated 10th May 2005 passed by the learned Magistrate on the Application made by the Applicant for grant of exemption is set aside and the learned Magistrate will hear the said Application on its own merits as expeditiously as possible.

(iii) The Applicant is at liberty to apply before the learned Magistrate on 20th July 2005

for cancellation of non-bailable warrant ordered to be issued by the learned Magistrate. If such an application is made by the Applicant, the same shall be decided by the learned Magistrate on or before 19th August 2005 and pending decision of the said Application, the Applicant shall not be arrested till 22th August 2005 on the basis of such non-bailable warrant.

(iv) If the Applicant fails to appear before learned Magistrate on 20th July 2005, the protection granted to the Applicant against his arrest will not apply.

(v) The Application is disposed of in the above terms.

(vi) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.